TaxNewsFlash

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Announcement 2016-39: Retirement plan loans, hardship distributions, taxpayers affected by Hurricane Matthew

The IRS today released an advance version of Announcement 2016-39 that—in providing relief to taxpayers adversely affected by Hurricane Matthew—allows individuals with retirement assets in qualified employer plans (401(k)s and similar employer-sponsored retirement plans) to make loans and take hardship distributions from their plans.

Announcement 2016-39 [PDF 25 KB] also provides relief from certain verification procedures that may be required under retirement plans with respect to loans and hardship distributions and relaxes certain procedural and administrative rules that normally apply to retirement plan loans and hardship distributions.

Today's IRS guidance explains that qualified employer plan will not be treated as failing to satisfy any requirement under the Code or regulations merely because the plan makes a loan, or a hardship distribution for a need arising from Hurricane Matthew, to an employee or former employee whose principal residence on October 4, 2016 (October 3, 2016, for Florida) was located in one of the counties identified for individual assistance by the Federal Emergency Management Agency (FEMA) because of the devastation caused by Hurricane Matthew or whose place of employment was located in one of these counties on that applicable date or whose lineal ascendant or descendant, dependent, or spouse had a principal residence or place of employment in one of these counties on that date.

The counties identified for individual assistance by FEMA are in located in Florida, Georgia, North Carolina and South Carolina. If additional counties in these or other states are identified by FEMA for individual assistance because of damage related to Hurricane Matthew, the relief provided in this announcement will also apply, from the date specified by FEMA as the beginning of the incident period, and that date would be substituted for references to October 4, 2016, in this announcement.

The IRS guidance provides that plan administrators may rely upon representations from the employee or former employee as to the need for and amount of a hardship distribution, unless the plan administrator has actual knowledge to the contrary, and the distribution is treated as a hardship

Loans, hardship distributions

The IRS explained in a related IRS release—IR-2016-138 (October 21, 2016)—that individuals affected by Hurricane Matthew and who are participants in 401(k) plans, employees of public schools and tax-exempt organizations with 403(b) tax-sheltered annuities, as well as state and local government employees with 457(b) deferred-compensation plans may be eligible to take advantage of the streamlined loan procedures and liberalized hardship distribution rules. While IRA participants are barred from taking out loans, they may be eligible to receive distributions under liberalized procedures.

Plans will be allowed to make loans or hardship distributions before the plan is formally amended to provide for such features. In addition, the plan can ignore the reasons that normally apply to hardship distributions, thus allowing them, for example, to be used for food and shelter. If a plan requires certain documentation before a distribution is made, the plan can relax this requirement as described in the announcement.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.